U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

September 23, 2002

Al Grieshaber, Jr., Esquire
City Attorney
Post Office Box 447
Albany, Georgia 31702-0447

Dear Mr. Grieshaber:

This refers to the 2001 redistricting plan for the City of Albany in Dougherty County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our September 10, 2001, request for additional information on July 23, 2002.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the city's previous submissions. As discussed further below, I cannot conclude that the city's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plan for the city board of commissioners.

According to the 2000 Census, the City of Albany in Dougherty County, Georgia, has a total population of 76,939, of whom 49,770 (64.7%)are black. Of the 55,516 persons of voting age, 33,420 (60.2%) are black. As of September 1, 2002, there were 32,302 registered voters in the city, of whom 18,498 (57.3%) were black. Since the 1980 Census, the city's black population percentage has consistently increased. Between 1980 and 1990, it increased from 47.6 to 54.8 percent and in 2000 it reached 64.7 percent. Since 1990, the total population in the city has decreased.

Our analysis reveals that the black population in Ward 4 has steadily increased over the past two decades and that this trend is likely to continue. The ward's black population increased from 20 percent in 1980, to 40 percent in 1990. When the city redistricted after the 1990 Census, it reduced the black population in Ward 4 to 30 percent. The 2000 Census reveals that the black population in the ward had once again increased significantly, this time to nearly 51 percent, only to be reduced again in the plan proposed by the city to 31 percent in order to forestall creation of a black district.

We have carefully examined the circumstances surrounding the decision to reduce the percentage of the black population in Ward 4 under the proposed plan. Our analysis indicates that the city has not carried its burden of showing that its proposed plan was not designed with the intent to limit and retrogress the increased black voting strength in Ward 4.

The starting point of our analysis concerning whether the plan was motivated by an intent to retrogress is Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977).[1] Following the framework presented in that case, the evidence implies an intent to continue the city's practice of ensuring that two majority white wards are maintained in the city, despite the major increase in black population in Ward 4 to a level over 50 percent black. First, the historical background of past redistricting indicates an intent to maintain Ward 4 as a district that remains at the a level of 70 percent white, thus eliminating any ability of black voters to elect a candidate of choice in this district. The 1991 redistricting was undertaken after Ward 4 had incurred a major increase from about 20 to 40 percent black over the 1980's. The plan drawn then reduced the black population to 30 percent. Now, after the black population of Ward 4 has increased from 30 to almost 51 percent

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[1] There, the Supreme Court identified the analytical structure for determining whether racially discriminatory intent exists. This approach requires an inquiry into: 1) the impact of the decision; 2) the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; 3) the sequence of events leading up to the decision; 4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and 5) contemporaneous statements and viewpoints held by the decision-makers. Id. at 266-68.

in the last ten years, the city seeks to draw a plan which again reduces the population to 30 percent black.

Second, we note that one of the city's explicit redistricting criteria was to "maintain ethnic ratios (four majority black districts)." Exhibit C to your July 19, 2002, letter. The proposed plan does maintain four black districts, but implicit in that criterion is an intent to limit black political strength in the city to no more than four districts, even though Ward 4 had become majority black and demographic trends indicate that its strength will continue to increase in the future. The use of such a criterion under these circumstances implies that the proposed plan was designed with the purpose to limit and retrogress the increased black voting strength in Ward 4, as well as in the city as whole.

Third, there is no necessity for such a reduction in Ward 4. The city accomplished this result by moving the black population from Ward 4 into Ward 6, a district which is already 90 percent black. The justification for such a major change is unclear, since Ward 4 was not malapportioned. Also of significance is that there are a number of black persons who are interested in running for the board of commissioners within the area removed from benchmark Ward 4.

The reasons offered by the city for the reductions in the black population in Ward 4 do not withstand scrutiny. The city claims that the reductions are simply the result of population shifts from the south of the city to the northwest, as the result of natural disasters. The city asserts that as the population has become more mobile, the majority of new construction has taken place in the northwest corner of the city, replacing the housing units in the south city, and that the attractiveness of nearby shopping, restaurants, and other facilities has drawn the populace out of the center of the city.

These assertions do not account for the reduction in the black population in Ward 4. Under the benchmark plan, Ward 4 was not malapportioned and required no adjustment. Rather, other demographic changes experienced by the city account for the steady increase in the black population in Ward 4. For example, there has been long-term white flight from the city, a shift of black population into the city from poorer rural areas, and the movement of black population from flood-stricken Wards 3 and 6 into other wards, including Ward 4.

Our review of the benchmark and proposed plans, as well as alternative plans considered by the city, indicates that the reduction in the black population percentage in Ward 4 was neither inevitable nor required by any constitutional or legal imperative. Alternative redistricting approaches available to the city avoided reducing black voting strength in Ward 4 below the benchmark plan levels, while adhering substantially to the city's redistricting criteria as described in your submission. These facts indicate that the city has fallen short of demonstrating that the change in Ward 4 was not motivated by an intent to retrogress.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the city's 2001 redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Albany plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

J. Michael Wiggins
Acting Assistant Attorney General